

Introduced by: Councilmember Henry, *Reisinger, Clarke, M. Middleton, Stokes*

Prepared by: Department of Legislative Reference

Date: September 1, 2017

Referred to: JUDICIARY AND LEGISLATIVE INVESTIGATIONS Committee

Also referred for recommendation and report to municipal agencies listed on reverse.

CITY COUNCIL *17-0042 R*

A RESOLUTION ENTITLED

A COUNCIL RESOLUTION concerning

Informational Hearing – Feral Cats

FOR the purpose of requesting that representatives from the Health Department's Office of Animal Control appear before the City Council to discuss feral cats in Baltimore and whether the City's current approach to feral cats should be modified or remain the same.

Edward Henry
Margaret Clarke

Bill [Signature]
Sharon [Signature]

Robert Stokes

No. _____

****The introduction of an Ordinance or Resolution by Councilmembers at the request of any person, firm or organization is a courtesy extended by the Councilmembers and not an indication of their position.**

Agencies

Baltimore City Public School System

Baltimore Development Corporation

City Solicitor

Comptroller's Office

Department of Audits

Department of Finance

Department of General Services

Department of Housing and Community Development

Department of Human Resources

Department of Planning

Other: _____

Other: _____

Other: _____

Department of Public Works

Department of Real Estate

Department of Recreation and Parks

Department of Transportation

Fire Department

Health Department

Mayor's Office of Employment Development

Mayor's Office of Human Services

Mayor's Office of Information Technology

Office of the Mayor

Police Department

Other: _____

Other: _____

Board of Estimates

Board of Ethics

Board of Municipal and Zoning Appeals

Comm. for Historical and Architectural Preservation

Commission on Sustainability

Employees' Retirement System

Other: _____

Other: _____

Other: _____

Environmental Control Board

Fire & Police Employees' Retirement System

Labor Commissioner

Parking Authority Board

Planning Commission

Wage Commission

Other: _____

Other: _____

Other: _____

Boards and Commissions

**CITY OF BALTIMORE
COUNCIL BILL 17-0042R
(Resolution)**

Introduced by: Councilmembers Henry, Reisinger, Clarke, Middleton, Stokes
Introduced and read first time: September 11, 2017
Assigned to: Judiciary and Legislative Investigations Committee
Committee Report: Favorable with an amendment
Adopted: October 16, 2017

A COUNCIL RESOLUTION CONCERNING

Informational Hearing – Feral Cats

FOR the purpose of requesting that representatives from the Health Department's Office of Animal Control appear before the City Council to discuss feral cats in Baltimore and whether the City's current approach to feral cats should be modified or remain the same.

Recitals

Feral cats, cats that are unsocialized to humans and have a temperament of extreme fear of and resistance to contact with humans, are a reality in all communities, and Baltimore is no exception. Over time, understandings about how they should be treated have evolved and a number of different approaches to managing their presence in urban areas have been tried.

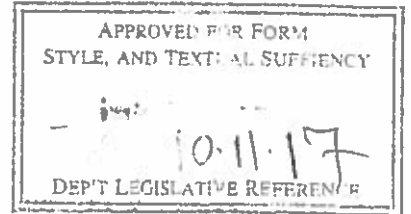
Nearly 10 years ago Baltimore changed its laws on, and approach to, feral cats to encourage efforts by the City and private individuals to trap, alter, vaccinate, ear tip, and return feral cats. Provisions were also added to the law to allow feral cat caregivers to engage with feral cats and feral cat colonies without violating City law.

A decade into this approach it is appropriate to review how it is working in Baltimore and whether or not changes may be required. The effects of this policy on cats, communities, and Animal Control employees should be examined to see if it is succeeding in its goals or if modifications to the current approach would benefit everyone involved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF BALTIMORE, That the Council requests that representatives from the Health Department's Office of Animal Control appear before it to discuss feral cats in Baltimore and whether the City's current approach to feral cats should be modified or remain the same.

AND BE IT FURTHER RESOLVED, That a copy of this Resolution be sent to the Mayor, the Health Commissioner, the Director of Animal Control, and the Mayor's Legislative Liaison to the City Council.

**EXPLANATION: Underlining indicates matter added by amendment.
~~Strike-out~~ indicates matter stricken by amendment.**



AMENDMENTS TO COUNCIL BILL 17-0042R
(1st Reader Copy)

By: The Judiciary and Legislative Investigations Committee
{To be offered on the Council Floor}

Amendment No. 1

On page 1, in the Introduced by line, after "Middleton" insert ". Stokes".

ADOPTED

BALTIMORE CITY COUNCIL
JUDICIARY AND LEGISLATIVE INVESTIGATIONS COMMITTEE
VOTING RECORD

BILL#: CC-17-0042R DATE: 9/26/17

BILL TITLE: Informational Hearing - Feral Cats

MOTION BY: SCOTT SECONDED BY: CLARKE

- FAVORABLE FAVORABLE WITH AMENDMENTS
 UNFAVORABLE WITHOUT RECOMMENDATION

NAME	YEAS	NAYS	ABSENT	ABSTAIN
Costello, E., Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clarke, M., Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bullock, J.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pinkett, L.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reisinger, E.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott, B.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stokes, R.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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TOTALS	7 6	0	1	

CHAIRPERSON: Ed Clarke
 COMMITTEE STAFF: D'Paul S. Nibber, Initials: DN

RE
Mayor



OFFICE OF COUNCIL SERVICES

LARRY E. GREENE, Director
415 City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202
410-396-7215 / Fax: 410-545-7596
email: larry.greene@baltimorecity.gov

HEARING NOTES

Bill: 17-0042r

Informational Hearing - Feral Cats

Committee: Judiciary and Legislative Investigations

Chaired By: Councilmember Eric Costello

Hearing Date: September 26, 2017

Time (Beginning): 10:15 a.m.

Time (Ending): 1:00 p.m.

Location: Clarence "Du" Burns Chamber

Total Attendance: ~80

Committee Members in Attendance:

Eric Costello Mary Pat Clarke Brandon Scott
Leon Pinkett Edward Reisinger Robert Stokes John Bullock

Bill Synopsis in the file?	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> n/a
Attendance sheet in the file?	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> n/a
Agency reports read?	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> n/a
Hearing televised or audio-digitally recorded?	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no	<input type="checkbox"/> n/a
Certification of advertising/posting notices in the file?	<input type="checkbox"/> yes	<input type="checkbox"/> no	<input checked="" type="checkbox"/> n/a
Evidence of notification to property owners?	<input type="checkbox"/> yes	<input type="checkbox"/> no	<input checked="" type="checkbox"/> n/a
Final vote taken at this hearing?	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> n/a
Motioned by:	Councilman Scott		
Seconded by:	Councilwoman Clarke		
Final Vote:	Fav/Am, 6-0		

Major Speakers

(This is not an attendance record.)

- Sharon Miller, Office of Animal Control
- Jennifer Brause, Baltimore Animal Rescue and Care Shelter ("BARCS")
- Jeffrey Amoros, Health Department



Major Issues Discussed

1. Chairman Costello introduced the proceedings, and discussed how the hearing would be structured.
2. Councilman Henry discussed the purpose for 17-0042R. He stated that he has no desire to end the Trap-Neuter-Release ("TNR") program. The Councilman mentioned that he has two main reasons for having this hearing: complaints from constituents with allergies to cats, and the preying on local fauna by feral cats. Councilman Henry thanked members of the TNR community for all of their contributions. He also added that he is not averse to cats, although he is allergic, which has caused him to emotionally distance himself in the past.
3. Mr. Jeffrey Amoros introduced two members of the TNR community, Ms. Sharon Miller of the Office of Animal Control ("Animal Control") and Ms. Jennifer Brause of BARCS.
4. Ms. Sharon Miller highlighted the successes of TNR. She noted that there are two options when dealing with the feral cat population, which include trap and euthanasia, as well as TNR. Ms. Miller noted that TNR is more human and efficient, and that Animal Control had previously euthanized but it did not make much of a difference. She added that the City had employed feeding bans which were very difficult to enforce. Ms. Miller stated that TNR came about after researching best practices in 2007, and mentioned that the program stops the cycle of breeding and nuisance behaviors. She stated that numerous other jurisdictions employ TNR including Washington DC, New York, and Jacksonville. Ms. Miller also remarked that the City received a \$1 million grant to fully implement its TNR program because it was proving to be such a success.
5. Ms. Jennifer Brause discussed the work of BARCS with regards to TNR. She noted that BARCS is a nonprofit that took over the City's shelter operations. Ms. Brause stated that prior to taking over, the City was euthanizing 98% of the animals within its possession, which consisted mostly of cats and kittens. She added that, between 2013 and 2016, BARCS received a PetSmart grant to administer its TNR program. Ms. Brause remarked that TNR is needed because many outdoor cats are not suitable for adoption as indoor animals, and removing cats leads other cats to fill their void.
6. Councilman Henry asked Ms. Brause to address his two aforementioned concerns. He was told that TNR has actually stabilized or reduced the cat population in feral cat colonies. Ms. Brause noted that BARCS offers free deterrents for those reporting issues with feral cats, and mentioned several others available for private purchase. Councilman Henry asked about whether cats must be returned to the same location after being trapped. He was told that relocating cats could be considered abandonment and that said cats would not have access to the same resources or care. Ms. Brause added that cat colonies vary in temperament and that best practices dictate training caregivers on management, including providing sandboxes for cats to eliminate. Councilman Henry asked whether neighbors have to sign off on individuals using their homes to become feral cat colony caregivers. He was told that they do not since they are simply taking care of cats already in their neighborhood, and essentially providing a service to their neighbors. Councilman Henry asked whether feeding stations can be moved from one side of a given property to another, and was told that caregivers must communicate with their neighbors to come to a proper solution.
7. Vice Chairwoman Clarke requested to see a map of all feral colonies in Baltimore City. She added that the Committee would have used the proper label of "community cat" but for the title of the resolution, which refers "feral cats." The Vice Chair was offered several maps of feral cat colonies, which showed that lower income areas have higher densities of said colonies. She was told that low income communities do not have the resources to take care of their cats and so they

are abandoned, and that this issue must be addressed. Vice Chair Clarke read aloud testimony of a woman that works with neighborhood kids to take care of a local cat colony. She was told that individuals with very little oftentimes offer the best care to cat colonies.

8. Ms. Caroline Griffin discussed her support for TNR, and noted that she works with several animal advocacy groups and was a former chair of the City's Spay and Neuter Advisory Board. She noted that the Bar Association endorsed TNR, and offered copies of its resolution in favor. Ms. Griffin noted that curtailing TNR would increase instances of animal cruelty.

9. Councilman Scott made a motion to amend 17-0042R to include Councilman Stokes as a sponsor. Vice Chair Clarke seconded the motion, and it passed 7-0.

10. Ms. Katie Flory works with the Maryland SPCA and offered her support for TNR. She noted that the SPCA provides education for the TNR community and trains children on proper procedure.

11. Ms. Dorothy Davis expressed her dissatisfaction with a feral cat colony near her home. She stated that she has lived in the City for 28 years, but for the past four years, she has been dealing with feral cats on her property. Ms. Davis noted that the cats have caused numerous health issues for her, and they often vomit, defecate, and/or urinate on her property. She remarked that she has been in contact with numerous organizations to address this situation including Community Cats of Baltimore and Animal Control.

12. Ms. Donna Bernstein is a Legal Aid attorney and discussed her support for TNR. She mentioned that she worked on the original TNR bill adopted by the City. Ms. Bernstein added that TNR is scientifically the best solution to feral cat colonies since it creates a healthier environment and eliminates the vacuum effect created by displaced cats.

13. Ms. Julianne Zimmer expressed her support for TNR, and believed additional work must be done to address feral cat colonies including a large scale education program on the importance of spaying and neutering pets.

14. Ms. Denise Batista is a volunteer trapper and discussed her support for TNR. She noted that since January of 2017, she has trapped 138 cats, and 90 of them have been adopted. Ms. Batista believes she spends nearly 60 hours per week in TNR services for free.

15. Ms. Linda Vallet works alongside Community Cats of Maryland, and stated that she has seen the success of the TNR program firsthand.

16. Ms. Emily Hovermale is a member of the Humane Society of the United States and expressed her support for Baltimore's TNR policy.

17. Ms. Sherry Banks expressed her support for TNR and noted that she takes care of 30-40 feral cats in her neighborhood. She stated that neighbors destroy the shelters she creates for these cats, which has resulted in issues in the past. Ms. Banks remarked that being a caretaker is a lot of time and it is not easy.

18. Ms. Peg Nemoff is a City resident and discussed her support for TNR. She stated that in 1988, she found out about the City's issue with feral cat overpopulation and became involved. Ms. Nemoff stated that she helped with the feral cat issue, consisting of over 7000 cats, in Smith Island in 2004, and created Community Cats of Maryland in 2009. She noted that there is a lot of enthusiasm for Baltimore's TNR program.

19. Ms. Carol Hyman is a caregiver to a feral cat colony in Federal Hill, and she discussed her support for TNR. She stated that she has worked with neighbors to address their issues, but noted that communities must do the heavy lifting since BARCS can only do so much. Ms. Hyman added that the City must educate residents on being responsible pet owners and avoiding the abandonment of said pets.

20. Ms. Luz Dameron discussed her support of TNR. She stated that she got a kitten four years ago, which got her involved with feral cats in her community. Ms. Dameron is a caregiver to a feral cat colony known as "the Ritz."

21. Ms. Sheri Artz is an Ednor Gardens resident and discussed her support for TNR. She stated that she is a licensed caregiver through the City's community cat program. Ms. Artz stated that the colony she looks after has frozen in growth and all of its cats are healthy. She added that the City must educate residents on responsible pet ownership, and address irresponsible abandonment of pets.

22. Ms. Denise Cellinese discussed her support for TNR. She noted that cats must be well nourished and that they cannot be counted upon to feed themselves by eating small prey like rats. Ms. Cellinese stated that she believes prevention is the best method to avoid cat colonies, and advocated for the use of public service announcements to this effect. She added that relocation of cats is cruel, and that the cat colony she serves is now down to just four cats.

23. Ms. Samantha Morrow expressed support for TNR. She would like for the City to collaborate more with residents to determine what resources are available to TNR advocates.

24. Ms. Jessica Bryan discussed her support for TNR. She stated that she loves cats and has helped to control the cat population in her neighborhood. Ms. Bryan noted that a lot of TNR advocates use their own money to run the program.

25. Ms. Michelle Lant expressed support for TNR. She described herself as a community cat mom and has two indoor cats. Ms. Lant recalled a story in which she rescued a kitten from drowning in a trashcan. She noted that feral cats are an issue everywhere including Disneyland, and would appreciate the City's support for TNR initiatives.

26. Ms. Savanna Miller noted her support for TNR. She stated that she provides education on TNR initiatives and has helped save 108 cats.

27. Ms. Catherine Hill discussed her support for TNR, and noted the many different cat deterrents available to residents that do not wish to have cats on their property.

28. Ms. Mary Jones stated that she supports TNR. She noted that she has been a part of the TNR community since 2011. Ms. Jones mentioned that the colony she oversees has seen its numbers drop from 34 cats to 11. She added that there is a vacuum effect for cats that are relocated, although she has relocated cats to barns. Ms. Jones stated that hot pepper spray bottles are a useful feral cat deterrent.

29. Ms. Mary Hosmer stated that she has been involved in the TNR community in Anne Arundel County and Baltimore City. She remarked that half of the feral cats found in colonies come from indoors. Ms. Hosmer requested that the City invest more resources into TNR initiatives including reaching out to local residents.

30. Ms. Mandy Kriss stated that she has been involved with the TNR community in Baltimore City. She noted that many different constituents have helped with feral cat issues without money or other resources available to them. Ms. Kriss remarked that many feral cats are outdoors because of irresponsible pet owners.

31. Councilman Reisinger stated that he supports the TNR program as a cat owner. He added that he knows that TNR programs work.

Further Study

Was further study requested?

Yes No

If yes, describe. N/A

Committee Vote:

E. Costello: Yea
M. Clarke: Yea
J. Bullock: Yea
L. Pinkett: Yea
E. Reisinger: Yea
B. Scott: Yea
R. Stokes: Absent

D'Paul Nibber

D'Paul Nibber, Committee Staff

Date: October 13, 2017

cc: Bill File
OCS Chrono File

Nibber, Dpaul

From: Everhart, Zeppy <zmeverh@radium.ncsc.mil>
Sent: Tuesday, September 26, 2017 2:45 PM
To: Nibber, Dpaul
Subject: (U) Please Keep Trap-Neuter-Return Initiative

received
9-26-17

Importance: High

Good Afternoon Mr. Nibber:

I am writing to strappingly support the continuance of the Trap-Neuter-Return initiative in Baltimore. This initiative organized and operated by the volunteers of Community Cats Maryland organization have taken great strides in managing feral cat populations and also increasing adoption rates, increasing health of cats , increasing cat quality of life, and improving human-cat interactions. Having been a resident of Baltimore for over 25 years, I can attest firsthand the Trap-Neuter-Return initiative has definitely succeeded and will continuously succeed. Community Cats Maryland has helped our community tremendously; in fact we have adopted two (2) cats that were part of the Trap-Neuter-Return initiative.

I know acquaintances whom live in large metropolitan areas in the Continental United States such as Los Angeles, San Diego, New York City steadfastly state Trap-Neuter-Return is an effective method in managing feral cat populations but also increasing adoption rates, increasing health of cats, increasing cat quality of life, and improving human-cat interactions.

If you have time to converse and communicate via the continuance of the Trap-Neuter-Return initiative in Baltimore City, I would be obliged to. Please contact me directly at contact information below in signature block.

Z. Everhart
United States Government
United States Department of Defense (DoD) Fort George G. Meade Fort George G. Meade, Maryland 20755-6653 Office
Direct: (240) 373-2562
Email: zmeverh@radium.ncsc.mil
Mobile: (410) 499-5371




Nibber, Dpaul

From: Kelly Spencer <forcesofnature27@hotmail.com>
Sent: Tuesday, September 26, 2017 10:29 AM
To: Nibber, Dpaul; Henry, Bill (email); Reisinger, Edward; Middleton, Sharon; Clarke, Mary Pat; Costello, Eric; Pinkett, Leon; Stokes, Robert; Bullock, John; Scott, Brandon
Subject: Feral Cat "Resolution"

Good morning,

I wanted to take a moment to express my support for continuing the current program for handling feral cats in Baltimore. I am 100% against changing the city's current program that allows Trap-Neuter-Return (TNR) and care takers of feral cat colonies. I have personally witnessed the successful outcomes of instituting TNR programs. I have participated in the TNR process with multiple organizations and help care for a colony with other caring supporters. I have my M.S. in Biology and have considered the benefits of TNR from a scientific aspect as well. There are proven results of the positive impact of feral cats that have gone through TNR. Other states continue to implement TNR programs due to the obvious effectiveness of controlling the feral cat population, while allowing the feral cats to give back to the community by keeping rodent populations down. Those that complain about the feral cats are most certainly just uneducated on the contributions made by feral cats. TNR allows the population to humanely stabilize while caretakers provide necessities for the existing population. The existing population of cats then give back by controlling the nuisance rodent population that exists in the city. Consider that many nonprofits and independent individuals are handling the feral populations which decreases the expenses to the city government. The government gets to avoid the expenses associated with staffing officers / the time involved with trapping feral cats, wear and tear on vehicles, time away from other animal related concerns, euthanasia costs and equipment, to name a few. Often times, trappers end up capturing domesticated cats that have been abandoned and help get them to rescues where they are able to be cared for and adopted. These organizations are also educating the public about the importance of spaying and neutering pets which in the long run will keep the population down. In circumstances where a colony may need to be moved, there are useful working cat programs to place them in businesses and barns. These establishments don't need domesticated cats. They establish a mutually beneficial relationship that allows care for the cats and nuisance rodent control for the business or barn. I urge you to read or listen to those who have adopted a working cat in order to hear about the positive impacts experienced. Ultimately the current feral cat program is successfully handling the cities feral population in a way that also provides a great service to the city with minimal cost. Please don't alter the positive and economical program that is currently in place. Thank you for your time and consideration.

 Kelly Spencer 

"It's a Great Day to Be Alive!"

received
9-26-17

Nibber, Dpaul

From: Sarah Clatterbuck Soper <sclatter@segv.com>
Sent: Tuesday, September 26, 2017 10:33 AM
To: Nibber, Dpaul
Subject: TNRM program

My name is Sarah Clatterbuck Soper and I live at 736 E 30th St. I wish to express my support for Baltimore's current successful and humane use of TNRM programs for community cats to continue, with no harmful changes to the law.

Thank you,

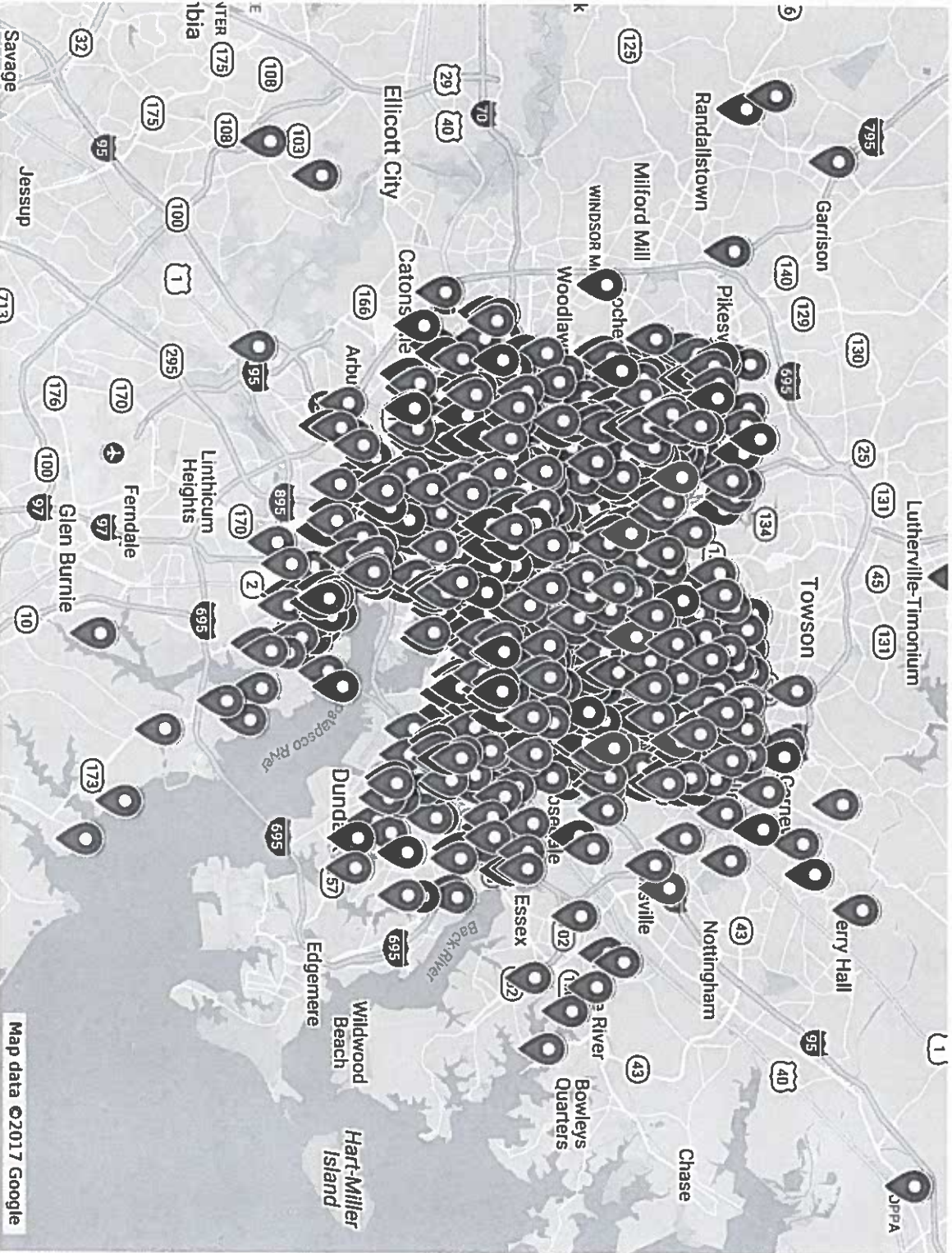
Sarah Clatterbuck Soper

Baltimore Colony Map

MAP-06-15-2017.xlsx

All items

received
9-26-17

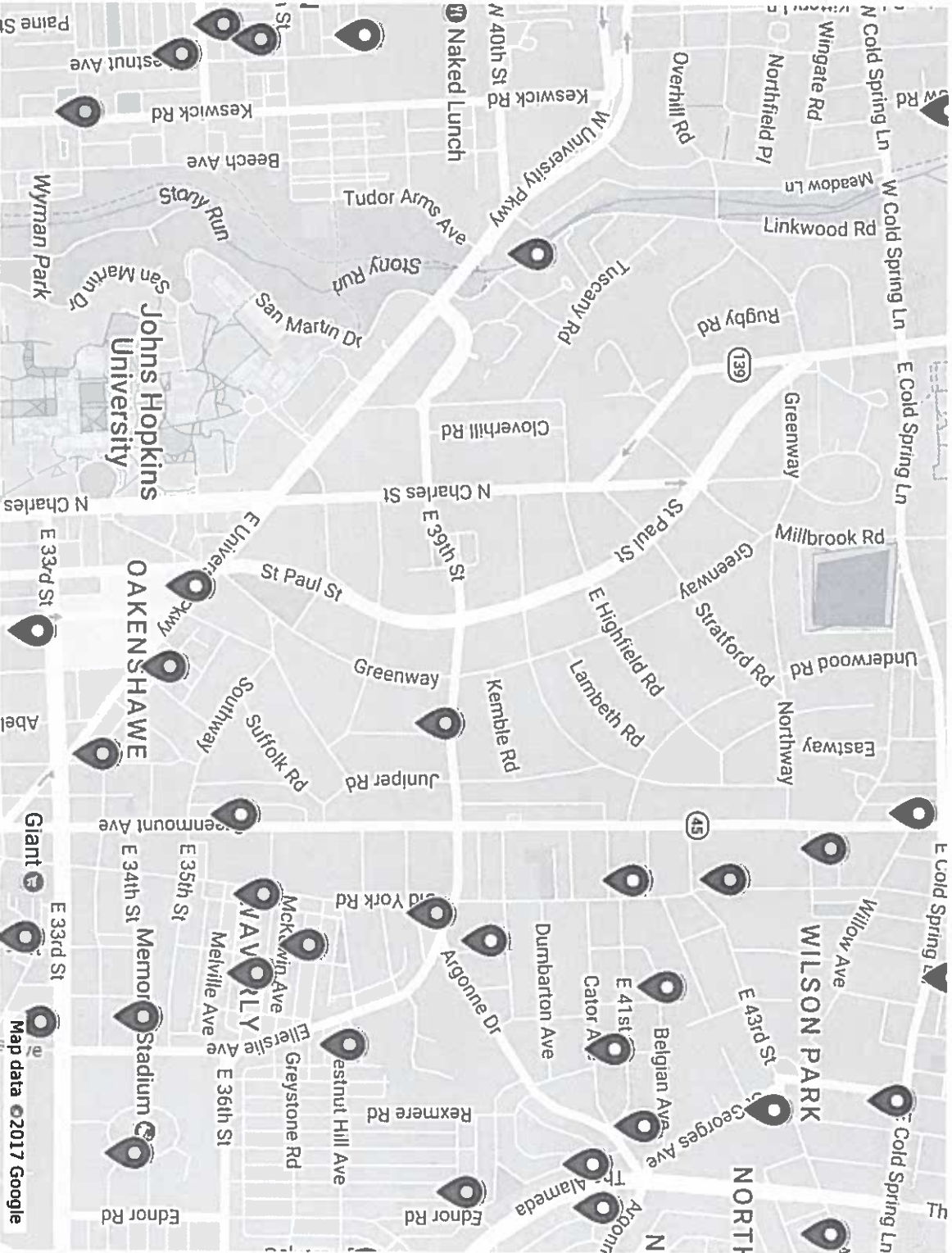


Baltimore Colony Map

MAP-06-15-2017.xlsx

All items

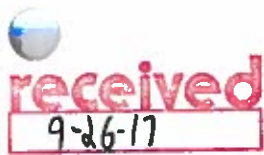
received
9-26-17



On Sun, Sep 24, 2017 at 7:15 PM, Debbie Parry
<luvmidk@icloud.com> wrote:

We desperately need tnr to help the feral cat population. The public does not want a lot of cats that are sick and reproducing. They are beneficial in that they help with the mouse and rat problems. They are also loved by many of us animal activist. Thank you, Debora Parry

received
9-26-17



Hi Mary;

I had a feral living around my house, and she had several litters over 3 years. Three or four years ago I was in position to TNR. I borrowed a trap from BARCs and followed their great advice (mackerel mushed into newspaper over trigger). Took 1/2 hour to collect mom and her 3 2-month-old kittens. Mom (AKA the Princess Arjumand) and grey female kitten were neutered at SPCA next day. I kept kittens in bathroom for a couple of weeks til I found them a home. Mom I let out after she recovered--she wailed around the house for a day or two looking for her children. She has stayed here ever since, demanding food, daring me to walk past her. she has come inside a couple of times when I leave the screen door open but bolts back out. She'd rather take the bus to FL during the snow (I guess, where else would a sane cat go?) than come in then. And she looks speculatively at my son. payback, I guess.

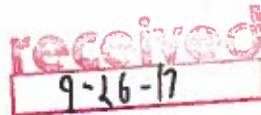
Drew Brown

Cheswolde, 21209

Just a note to tell of my experience with TNR. I responded to a request for help, an elderly lady was struggling to feed a colony of 25 cats at her apartment complex. Several litters of kittens were being born quite frequently and she was constantly calling rescues/shelters pleading for help with finding homes for all the kittens. Together her and I trapped and got all the cats altered, we took turns feeding them, we found homes for some of the friendly cats. That was eight years ago. Today there are 4 cats living at this site, no kittens have been born for the past six years. Success story? I would definably say so! The lady has since passed away, peacefully knowing her beloved colony of cats are taken care of and not breeding out of control. The cats, apartment management, residents are all very pleased and residents often stop and thank me for caring for the cats.

I have since gotten involved and manage 5 other colonies, and I can echo the same story for each of the colonies, none of them have increased, all are well maintained, healthy, and have volunteers who care for the cats. I have also helped many thankful caretakers with TNR, over 900 cats have been altered and are no longer contributing to the many unwanted cats that are filling the shelters. And to be totally honest, I have only seen three dead birds at the five different colonies I manage.

Win, Win for all involved!



Etta Smith

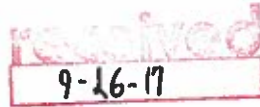
443-618-3889

Better to light a candle for one lost animal
than to curse the darkness of man's indifference.
Saving just one animal won't change the world
but it surely will change the world for that one animal.

I'm one of several people who take care of a colony of 20-30 feral cats. If it wasn't for TNR our colony would be doubled maybe tripled this many cats. When ever some poor excuse pet owner decides they no longer want the responsibility of taking care of their poor kitty it usually gets dumped at our colony. Thanks to the wonderful lady that's in charge of keeping our colony healthy comes in to TNR the new drop offs. Please do not change or get rid of the TNR program.

Thank you

Sandra Dembeck



Hello, my name is Dana McCann and I work tirelessly to try and help curtail the lost and forgotten stray cats of Baltimore City, Maryland. These cats do not belong on the streets of Baltimore. They are a product of our neighborhood environment's ignorance in owning pets and then neglecting them. They are tossed out on the streets once they become an issue for a family or individual left untreated and neglected to now live on the mean streets of Baltimore, subject to pregnancy, starvation, illnesses, abuse and death. We cannot continue to discard these helpless defenseless animals when we have mean spirited people with no soul or conscious. They are subject to such cruel abuse as the little kitty that was rescued from BARCS as someone without a soul lit the poor defenseless kitten on fire burning her precious tiny ears off. How does this happen, how does this continue, how do we not defend, protect these defenseless animals. It's bad enough they are tossed away as discarded garbage and forced to fend for themselves that people such as myself cannot step in and at least try to curtail them from reproducing many liters a year. One female cat can go into heat up to four times a year with liters of upward to 6-8 babies at a time with no one to care for them. It's tragic and so sad.

People don't want them in their neighborhoods so stop throwing them out like garbage. Stop letting your personal cats out to roam in neighbors to aggravate people where they want to do harm to them. They are poisoned and severely hurt and killed every day by savages as I call them "people".

TNR helps control a neighborhood who is inundated with stray cats roaming all over their neighbors desperately seeking shelter and food dying of starvation. Volunteers such as myself offer our time and money to try and help contain the populations. And taking sick cats off the streets that are suffering.

No cat should be abandoned to live on the streets. They certainly don't ask to be tossed away once having a home. Cats become a huge problem in any one neighborhood because it only has to start with two, a male and female who are not neutered or spayed to prevent hundreds of cats in one neighborhood. Turning away is not the answer, poisoning them is not the answer. Abusing or killing them is not the answer. Not feeding them is not the answer. Its cruel, it's inhumane, it's sad.

Sticker stringent laws need to be enforced for anyone who is caught throwing their cat on the streets to live. Our problem is not the cats, its people, with no moral compass.

I certainly don't have the answer but stopping TNR is truly not the solution. Don't allow this to happen, we are pleading with you to help solve this very serious issue in Baltimore City as well as Baltimore County, Maryland. There are stray cats living in just about every neighborhood and people just don't care. Everyone is so wrapped up in our own selfish lives to even give a dime about a poor helpless defenseless cat all alone. They are not wild animals...they become a product of their environment because of mean, selfish, cruel people...Pure and simple.

Please we are asking to keep TNR in Baltimore City, Maryland. Allow caretakers to feed these helpless animals who are defenseless and scared and are discarded to fend for themselves on these terrible streets. (We must be their voice, they have no one).

Sincerely,


Dana McCann

Received
9-26-17

received
9-26-17

**AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES**

AUGUST 14-15, 2017

RESOLUTION

RESOLVED, That the American Bar Association urges state, local, territorial, and tribal legislative bodies and governmental agencies to interpret existing laws and policies, and adopt laws and policies, to allow the implementation and administration of trap-neuter-vaccinate-return programs for community cats within their jurisdictions so as to promote their effective, efficient, and humane management.

REPORT

Introduction

It is estimated that there are 74-96 million owned cats¹ and 30-40 million free-roaming² (“community”) cats living in the United States. Jurisdictions have struggled to manage the community cat population for decades using a traditional trap-and-remove technique that typically results in killing the cats.³ This technique has proven inefficient, ineffective, and inhumane. Trap-neuter-vaccinate-return⁴ (“TNVR”) is a management technique, introduced in the U.S. in the 1990s, by which community cats are humanely trapped, evaluated, sterilized, by a licensed veterinarian, vaccinated against rabies, ear-tipped to designate they have been sterilized and vaccinated, and returned to their original habitat. Kittens and socialized adults are removed and placed for adoption when possible.⁵ In some situations, the returned cats are under the care of a volunteer who feeds, waters, and monitors the cats for illness or injury and for any new arrivals so that they may be trapped, neutered, vaccinated, and returned to their original habitat. TNVR has been recognized as one of the most effective and efficient methods of reducing and controlling the population of community cats, as well as potential disease control.⁶ Moreover, there is widespread public support for the use of TNVR to manage community cats.⁷ In these times of limited budgets for local animal control shelters, TNVR provides a humane, effective, cost-saving alternative for shelters seeking to limit the intake of community cats into their facilities, protect public health, and reduce the number of free-roaming cats in the neighborhoods they serve.

¹ ASPCA, *Pet Statistics*, <http://www.aspc.org/animal-homelessness/shelter-intake-and-surrender/pet-statistics> (last visited Feb. 19, 2017).

² Humane Soc’y of the U.S., *Managing Community Cats: A Guide for Municipal Leaders* 4, https://www.animalsheltering.org/sites/default/files/content/ca_community_cat_guide_updates_6_15_lowres_final.pdf (last visited Feb. 19, 2017). Free-roaming, or community cats, are cats whose home is outdoors. Many are unsocialized to humans, while others may be stray, lost or abandoned. *Id.* at 1.

³ *Taking a Broader View of Cats in the Community: NACA Feral Cat Policy Moves Toward Management*, ANIMAL SHELTERING, Sept./Oct. 2008 at 8, http://www.aplnj.org/assets/pdf/NACA_Interview.pdf (summarizing interview with Mark Kumpf, National Animal Control Association (NACA) President who referred to the old policy of feral cat “removal” as “capture-and-euthanize”).

⁴ Some, primarily opponents, use the term “Release” instead of “Return.” Most TNVR programs are designed to return the cats to their original location. *What is TNVR?*, SPAYING CAP. REGION UNOWNED FERAL FELINES, <http://scruffcats.org/what-is-tnvr/> (last visited Sept. 26, 2016). However, in the event it is impossible to return the cats to their original location, perhaps because of construction or other external threats to the lives of the cats or if the cats pose a serious and actual threat to an endangered species living in the original location, many advocates will opt for “releasing” them to another available location, taking the health of the cats and new environment into account, rather than killing them because they are not able to be “returned.” *See id.*

⁵ *See, e.g.,* Julie Levy et al., *Evaluation of the effect of a long-term trap-neuter-return and adoption program on a free-roaming cat population*, 222(1) JAVMA 42, 44 (2003) (noting 47% of the 155 cats involved in the TNVR study were adopted over the course of the study), https://www.avma.org/News/Journals/Collections/Documents/javma_222_1_42.pdf.

⁶ *See* Sheilah A. Robertson, *A review of feral cat control*, 10(4) J. FELINE MED. & SURGERY 366–75 (2008).

⁷ Peter J. Wolf, *New Study Reveals Widespread Support for Trap-Neuter-Return*, faunalytics, <https://faunalytics.org/new-survey-reveals-widespread-support-for-trap-neuter-return/> (last visited Sept. 26, 2016).

Nevertheless, legal challenges to TNVR programs have been raised in various areas of the country due to the inconsistent legal treatment of community cats and TNVR programs by state statutes and local ordinances and policies. While some jurisdictions expressly recognize TNVR in their laws, most do not. In fact, aspects of TNVR programs have been found to violate many traditional criminal and civil statutes creating unnecessary obstacles for the implementation and administration of TNVR programs for private individuals and localities that may find their programs in violation of state law.⁸ Consistent interpretation and/or adoption of laws throughout the country that allow for TNVR programs would provide much-needed guidance to state, local, territorial, and tribal government entities, as well as for private entities and individuals, as they seek to manage community cat populations effectively and humanely. By urging support for legal recognition of a community cat management technique that saves government resources, protects public health, respects the lives of community cats as supported by a large majority of the public, and protects wildlife by reducing over time the number of free-roaming cats, the ABA promotes just laws that benefit public and private interests.

TNVR programs are not without opposition. Some avid birders, conservationists, and others oppose TNVR as a management tool for community cats.⁹ These stakeholders claim that free-roaming cats have an adverse impact on birds and other wildlife and pose a threat to public health, and that TNVR programs are ineffective.¹⁰ However, the studies upon which they rely generally are flawed.¹¹ In fact, there is considerable empirical evidence showing that TNVR is more effective, efficient, and humane than trap-and-remove programs for the management of community cats.¹²

Effectiveness of TNVR Programs

While there is no official count of the number of cats removed from neighborhoods each year, the American Society for the Prevention of Cruelty to Animals (“ASPCA”) estimates that 3.4 million cats enter shelters annually and, of those, 1.4 million are killed.¹³ Given the massive numbers of community cats brought into shelters, the method of trapping and killing community cats should be reviewed. Studies have estimated that at least 50% of all community cats must be

⁸ See e.g. Va. Att’y Gen., Opinion Letter on TNR (July 12, 2013), http://ag.virginia.gov/files/Opinions/2013/12-100_Napier.pdf, clarified May 4, 2015, <http://4fi8v2446i0sw2rpg2a3fg51.wpengine.netdna-cdn.com/wp-content/uploads/2015/05/Ltr-Norfolk-SPCA-Blizard.pdf> [hereinafter VA Opinion Letter].

⁹ See, e.g., Am. Bird Conservancy, *Trap, Neuter, Release*, <https://abcbirds.org/program/cats-indoors/trap-neuter-release/> (last visited Feb. 19, 2017).

¹⁰ See, e.g., PETER P. MARRA & CHRIS SANTELLA, CAT WARS: THE DEVASTATING CONSEQUENCES OF A CUDDLY KILLER (2016); Paul Barrows, *Professional, ethical, and legal dilemmas of trap-neuter-release*, 225(9) JAVMA 1365-69 (2004), https://www.avma.org/News/Journals/Collections/Documents/javma_225_9_1365.pdf.

¹¹ See, e.g., Laurie D. Goldstein, *All Dollars and No Sense: Critique of Dr. Pimentel’s Estimated Economic Impact of Domestic Cat Predation*, 2 MID-ATLANTIC J. ON L. & PUB. POL’Y 153, 158-63 (2013); Written testimony of Peter J. Wolf, Cat Initiatives Analyst, Best Friends Animal Soc’y, to D.C. Councilmember Mary M. Cheh, Chair of Comm. on Transp. & Env’t (Sept. 18, 2015) (discussing the Draft 2015 DDOE WILDLIFE ACTION PLAN) (on file with author).

¹² See, e.g., F.B. Nutter, *Evaluation of a Trap-Neuter-Return Management Program for Feral Cat Colonies: Population Dynamics, Home Ranges, and Potentially Zoonotic Diseases* (2005) (unpublished Ph.D. dissertation, N.C. State University); J.K. Levy et al., *Effect of high-impact targeted trap-neuter-return and adoption of community cats on cat intake to a shelter*, 201(3) VETERINARY J. 269-74 (2014), <http://www.sciencedirect.com/science/article/pii/S1090023314001841>.

¹³ ASPCA, *supra* note 1.

killed to have any impact on the population and potential subsequent intake into shelters.¹⁴ Since it has been proven to be impossible to catch all community cats in a population, the cats that are not caught and killed continue to reproduce and other cats enter the area vacated by those removed. The trapping and killing of community cats therefore must be sustained on an ongoing basis to simply prevent the population from growing. The more effective, efficient, and humane solution to manage community cats is TNVR.

TNVR has been shown to reduce the number of community cats in areas targeted by these programs.¹⁵ A study conducted in Randolph County, North Carolina, showed a 36% average decrease in population of six community cat colonies due to targeted TNVR efforts.¹⁶ By contrast, three unsterilized colonies involved in the study experienced an average 47% increase over the same period. Once spayed and neutered, the community cats in these targeted colonies no longer reproduce, which effectively curtails the number of community cats in the population.

Additionally, TNVR has been shown to significantly decrease the intake of community cats into local animal shelters and can save the jurisdiction significant expense. For example, one study in Alachua County, Florida documented a 66% decrease in animal shelter intake of community cats from a TNVR program in a targeted ZIP code compared to a 12% decrease elsewhere in the county.¹⁷ Another study, in Orange County, Florida, showed the average cost of impounding and killing a cat was \$139; while the average cost of surgery was \$56.¹⁸ The study also noted that the program in Orange County was a long-term program that spayed and neutered 7,903 community cats over a 6-year period, saving the county an estimated \$656,000. Further, because TNVR, through the sterilization of cats, reduces certain nuisance behaviors by cats, such as roaming for mates, fighting, and urine-spraying, TNVR case studies have documented a significant reduction in nuisance complaint calls to animal control.¹⁹ Thus, TNVR is more efficient, effective, and humane than lethal methods of control.

Finally, TNVR has been increasing in popularity nationwide²⁰ and worldwide.²¹ Further, most all national animal welfare organizations endorse the use of TNVR programs to reduce the

¹⁴ Kate Hurley, *For Community Cats, a Change is Gonna Come*, ANIMAL SHELTERING MAG., Sept.-Oct. 2013, at 27, 27.

¹⁵ See generally Nutter, *supra* note 12; Levy et al., *supra* note 12.

¹⁶ See generally Nutter, *supra* note 12.

¹⁷ See generally Levy et al., *supra* note 12.

¹⁸ Kathy L. Hughes et al., *The Effects of Implementing a Feral Cat Spay/Neuter Program in a Florida County Animal Control Service*, 5(4) J. APPLIED ANIMAL WELFARE SCI. 285-98 (2002).

¹⁹ See Best Friends Animal Soc'y, *How TNR Reduces Nuisance Complaints: What the Research Tells Us*, <http://bestfriends.org/resources/how-tnr-reduces-nuisance-complaints-what-research-tells-us> (last visited Feb. 19, 2017).

²⁰ Elizabeth Holtz, *Trap-Neuter-Return Ordinances and Policies in the United States: The Future of Animal Control*, ALLEY CAT ALLIES L. AND POL'Y BRIEF 3 (2014), <https://www.alleycat.org/resources/trap-neuter-return-ordinances-and-policies-in-the-united-states-the-future-of-animal-control/> (more than 330 local U.S. governments incorporate TNVR as of 2014).

²¹ See Eugenia Natoli et al., *Management of Feral Domestic Cats in the Urban Environment of Rome (Italy)*, 77 PREVENTATIVE VETERINARY MED. 180, 181 (2006); *Trap-Neuter-Return in Seoul*, ANIMAL RESCUE KOREA (Mar. 11, 2013), <http://www.animalrescuekorea.org/articles/trap-neuter-return-in-seoul>; *History of TNR in Hong Kong*, Soc'y for Prevention Cruelty to Animals, <http://www.sPCA.org.hk/en/animal-birth-control/tnr-trap-neuter-return/history-tnr-hong-kong>, (last visited Feb. 19, 2017); *The Trap, Neuter, Return Program and the Feral Cat Coalition*, Toronto.

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populations of community cats. These organizations include the ASPCA,²² The American Humane Association,²³ Best Friends Animal Society,²⁴ and the Humane Society of the United States.²⁵ Also in support are the Association of Shelter Veterinarians²⁶ and the Tufts Center for Animals and Public Policy.²⁷

Community Cats, TNVR and Traditional Animal Control Laws

Domestic cats exist on a wide spectrum of socialization to humans from feral cats, those cats born outdoors with no socialization to humans,²⁸ to stray cats who once lived in a home but find themselves lost or abandoned by their owner and who are well-socialized, friendly cats.

Accurately determining if a free-roaming cat is “feral” or a lost or abandoned pet, however, is full of uncertainty.²⁹ There is currently no universal method available to accurately categorize any cat as feral or tame.³⁰ Based upon these uncertainties, this report refers to all free-roaming cats living outdoors as community cats.³¹

Regardless of differing categories of socialization and ownership status, all cats are defined in the Code of Federal Regulations as domestic cats of the species *Felis domesticus*.³² This domesticated status provides certain legal protection to cats through many state and local animal cruelty provisions.³³

<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=6626f1f960745410VgnVCM10000071d60f89RCRD&vgnextchannel=a5bb39220b2c1410VgnVCM10000071d60f89RCRD> (last visited Feb. 19, 2017).

²² ASPCA, *Position Statement on Community Cats and Community Cat Programs*, <http://www.asPCA.org/about-us/asPCA-policy-and-position-statements/position-statement-community-cats-and-community-cat> (last visited Feb. 19, 2017).

²³ AM HUMANE, *Position Statement, Cat Colonies* (Aug. 26, 2016), <https://www.americanhumane.org/position-statement/cat-colonies/>.

²⁴ BEST FRIENDS ANIMAL SOC’Y, *Helping Stray Cats: TNR is the Key*, <http://bestfriends.org/our-work/best-friends-advocacy/protecting-community-cats> (last visited Feb. 19, 2017).

²⁵ HUMANE SOC’Y OF THE U.S., *The HSUS’s Position on Cats*, http://www.humanesociety.org/animals/cats/facts/cat_statement.html (last visited Feb. 19, 2017).

²⁶ ASS’N OF SHELTER VETERINARIANS, *Trap-Neuter-Return of Free-roaming and Community Cats* (April 2015), <http://www.sheltervet.org/assets/docs/position-statements/trapneuterreturn.pdf>.

²⁷ Genevieve Rajewski, *Feline Fixers*, TUFTS NOW (June 1, 2011), <http://now.tufts.edu/articles/feline-fixers>.

²⁸ Alley Cat Allies, *Feral and Stray Cats – An Important Difference*, <http://www.alleycat.org/resources/feral-and-stray-cats-an-important-difference/> (last visited Feb. 19, 2017).

²⁹ Margaret R. Slater et al., *A Survey of the Methods Used in Shelter and Rescue Programs to Identify Feral and Frightened Pet Cats*, 12(8) J. OF FELINE MED. AND SURGERY 592, 593 (2010).

³⁰ *Id.*

³¹ Some cats who live indoors with their owners are allowed outdoors to free-roam. It is often difficult to distinguish these cats from “community cats” whose home is on the street. These cats are not included in the definition of “community cat.”

³² 50 C.F.R. §14.4 (2012) (“Domesticated animals includes...*Felis domesticus*...”). Title 50 of the Code of Federal Regulations is entitled “Wildlife and Fisheries” and this provision is defining terms for the laws governing the exportation, importation and transportation of wildlife.

³³ *See, e.g., Thurston v. Carter*, 92 A. 295, 295-96 (Me. 1914).

Moreover, under common and statutory law, pets—including cats—are considered personal property.³⁴ Local animal control laws define ownership of cats and impose obligations on all owners. Issues arise when governmental agencies attempt to define cats as “feral” for management or control purposes while disregarding ownership status, anti-cruelty provisions, and public opinion. State laws often authorize local governments to enact laws relative to community cats. This approach has led to drastically disparate treatment of community cats under the law even within the same state.

Traditional ordinances for local animal control departments vary widely in jurisdictions across the country and create problems for community cats. Community cats, as free-roaming cats, frequently are considered “stray” or “at-large” and subject to impoundment by animal control. Many jurisdictions require that an impounded animal be held for a specified period of time—the “stray hold” period—to allow the owner to reclaim the animal. Since the national average of owners reclaiming their cats at the animal control facility is approximately 2%³⁵, and most community cats are not, in fact, owned, these cats are very rarely claimed. After the stray hold has expired, unclaimed community cats often are killed by the shelter. Not only does the impoundment of community cats harm the cats, but it is expensive for the jurisdiction to trap, hold and kill the cats, and then dispose of the bodies.

Traditional animal control laws also create serious obstacles for TNVR participants as they may find themselves unwittingly in violation of a number of laws. Specifically, if the TNVR participant is deemed the legal “owner” of the cat, they could be subject to several obligations which may include licensing, pet limits, and at-large or leash laws, making it virtually impossible to perform TNVR activities. Even if not deemed an owner, feeding bans, nuisance laws, and laws prohibiting abandonment, may subject them to civil and/or criminal prosecution. In addition, they may be held liable to third parties if community cats cause such parties harm. Legal recognition of TNVR is needed to protect participants in TNVR programs. These protections should extend to both government and private entities and individuals participating in these programs.

Ownership and Legal Obligations that Attach

Animal ownership is legally defined in many ways, but a common definition involves keeping or harboring an animal which typically means feeding the animal over a period of time.³⁶ Such a definition has the mostly unintended consequences of targeting community cat caregivers, as they regularly monitor and feed community cats. The ownership issue becomes even more complex when one considers the number of owned cats who are allowed to roam outdoors and

³⁴ See, e.g., *Van Patten v. City of Binghamton*, 137 F.Supp.2d 98, 104 (N.D.N.Y. 2001); *Kaufman v. Langhofer*, 222 P.3d 272, 274 (Ariz. Ct. App. 2009).

³⁵ AM. HUMANE, *Animal Shelter Euthanasia*, <http://www.americanhumane.org/fact-sheet/animal-shelter-euthanasia-2/> (last visited Feb. 19, 2017).

³⁶ See e.g. “Owner— A person . . . who keeps or harbors a dog or cat or knowingly permits a dog or cat to remain on or about any premises occupied by that person.” Am. Veterinary Med. Ass’n, *AVMA Model Dog and Cat Control Ordinance*, <https://www.avma.org/KB/Policies/Documents/avma-model-dog-and-cat-control-ordinance.pdf> (last visited Feb. 19, 2017). Jurisdictions typically define “keeps or harbors” to mean “the act of, or the permitting or sufferance by, an owner or occupant of real property either of feeding or sheltering any domesticated animal on the premises of the occupant or owner thereof.” PRINCE GEORGE’S COUNTY., MD., CODE OF ORDINANCES § 3-101(50)

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receive handouts from generous neighbors.³⁷ Under some statutory interpretations, the same cat could be legally owned by several individuals, many of them most likely unaware of their legal ownership status.

Community cat caregivers, who often care for several cats residing together in colonies, if deemed owners, could be criminally and/or civilly liable for violations of a number of laws. For example, some jurisdictions require owners to license their cats³⁸ and/or limit the number of cats one may own.³⁹ The community cat caregiver would be seriously burdened to have to license each cat annually, and/or might find herself in violation of a pet limit law. Additionally, some jurisdictions prohibit owners from allowing their cats to run at-large.⁴⁰ Because community cats are, by definition, at-large, the community cat caregiver is in violation of this law as well. While these laws may serve useful purposes for true cat owners, they unnecessarily burden community cat caregivers and prohibit the implementation of TNVR programs. Because of these concerns laws defining owner should exempt community cat caregivers, and at-large laws, stray-hold periods, and licensing requirements should exempt ear-tipped community cats.

Abandonment and Feeding Bans

Even if TNVR participants are not deemed owners, traditional laws still may prohibit TNVR programs. State statutes and often local ordinances contain criminal provisions for “abandonment” of an animal. These provisions create myriad legal issues for administrators of TNVR programs; specifically when jurisdictions interpret the “return” aspect of TNVR to be abandonment.⁴¹ The anti-cruelty laws proscribe conduct, including abandonment, “under circumstances reasonably likely to result in the infliction of unjustifiable pain, or suffering, or cruelty upon [the animal].”⁴² A typical definition of “abandon” is “to desert, forsake, or absolutely give up an animal without having secured another owner or custodian for the animal or by failing to provide the elements of basic care”⁴³ TNVR programs that return cats to their original location should not be deemed “abandonment.” TNVR programs are deliberately designed to improve the cat’s overall health and well-being thus there is no intent to harm the cats. First, only cats determined to be healthy are returned to where they were found. Further, if the cats were healthy at the time they were trapped there is no reason to believe that returning them to where they were originally found would subject them to pain, suffering, or cruelty. Moreover, the cats’ health and well-being is enhanced after sterilization and vaccination for rabies. Thus, these laws should not be interpreted by government agencies to prevent the “return” portion of TNVR.⁴⁴ In fact, for clarity, the abandonment law should expressly exempt TNVR “return” of ear-tipped community cats. The potential of criminal penalties due to varying

³⁷ See Shawn Gorman & Julie Levy, *A Public Policy Toward the Management of Feral Cats*, 2 PIERCE L. REV. 157, 157 (2004) (estimating between 9-12% of households feed strays).

³⁸ See VA. CODE ANN. §3.2-6524(B), §3.2-6587(A)(2).

³⁹ See, e.g., PRINCE GEORGE’S COUNTY, MD. CODE § 3-148.01 (“No person may keep or harbor five (5) or more animals larger than a guinea pig or over the age of four months, without first obtaining an animal hobby permit.”).

⁴⁰ See, e.g., PRINCE GEORGE’S COUNTY, MD. CODE § 3-135 (“It shall be unlawful for the owner . . . of any animal . . . to permit the animal to run at large.”).

⁴¹ Va. Opinion Letter, *supra* note 8.

⁴² *People v. Untiedt*, 42 Cal. App. 3d 550, 554 (Ct. App. 1974).

⁴³ VA. CODE § 3.2-6500.

⁴⁴ Note that many TNVR programs provide care to the cats after they are returned. Clearly, under these programs, the cats have not been abandoned.

interpretations of statutory schemes serve as a significant factor deterring potential caregivers from becoming involved in TNVR programs, thereby worsening a community's "feral cat problem."

Additionally, ordinances are commonly enacted which provide sanctions for the feeding of community cats.⁴⁵ Feeding bans cause a real dilemma legally for caregivers. By feeding the community cats they care for, caregivers could be violating such an ordinance, but by adhering to the ordinance they could conceivably find themselves in violation of a cruelty provision, by failing to provide care to those same animals. Further, for those cats who have become dependent on food provided by a caregiver, a feeding ban is inhumane, usually forcing cats to subsist on insufficient resources and/or create a nuisance by rummaging through dumpsters for food. To rectify this, feeding ban laws should be interpreted to exempt ear-tipped community cats.

Liability to Third-parties

Liability to third-parties also is a concern for most governmental entities, private organizations, and individuals involved in administering and participating in TNVR programs. Under common law, cat owners have no legal duty to keep their cat confined. Thus, if a cat caused harm to another, an owner was held responsible only if they knew the cat was dangerous and was likely to cause harm or damage to another.⁴⁶ However, some courts have held a person (whether an owner or not) liable for damages if they did something that caused the cats to be attracted to an area owned by another and the cats did damage to and/or caused a private nuisance that affected the landowner's enjoyment of their property.⁴⁷ Moreover, some jurisdictions override the common law and hold owners strictly liable if their cat is "at-large" and causes any damage to a third-party.⁴⁸ Potential liability to any TNVR participant may hinge on how active a role they play in the TNVR process and interpretation of applicable statutes and ordinances and may affect their willingness to participate.⁴⁹ However, if a TNVR participant is not considered an owner, most third-party claims will fail. Moreover, even in a jurisdiction that may hold a non-owner liable if they find the TNVR participant caused the cats to be present, the TNVR participant may use the jurisdiction's allowance of TNVR as a defense to third-party liability.⁵⁰ For third-party

⁴⁵ ANAHEIM MUNICIPAL CODE: §6.44.1301 (stating that "It shall be unlawful for any person to intentionally provide food, water, or other forms of sustenance to a feral cat or feral cat colony within the boundaries of the City. It is not a violation of this section for any person to feed or shelter feral cats while working with an animal control agency under contract with the City of Anaheim.").

⁴⁶ *McElroy v. Carter*, 2006 WL 2805141 at *5 (Tenn. Ct. App. 2006) (holding that there is no common law legal duty to confine cat generally regarded as domestic animals unlikely to do harm if left to themselves and incapable of constant control).

⁴⁷ *Kyles v. Great Oaks Interests*, 2007 WL 495897 (Cal. Ct. App. 2007) (finding that an apartment manager may be liable to landowner for overflowing garbage bins that attracted cats).

⁴⁸ See, e.g., PRINCE GEORGE'S COUNTY, MD CODE: § 3-135.

⁴⁹ In conducting TNVR an "owned" free-roaming cat may be trapped "accidentally." TNVR participants initially check for a microchip delineating the owner of the cat when brought to the clinic so as to sterilizing an "owned" cat without the owner's permission. However, if the cat is not microchipped the cat will likely be vaccinated, sterilized and returned. In this instance TNVR participants should not be held liable to the owner for sterilizing the cat.

⁵⁰ See Judgment at 4, *Baker v. Kuchler*, No. 29D05-0605-SC-1055 (Ind. Super. Ct., Mar. 2, 2007) (the existence of a Community Cat Ordinance may be used as a "defense" against claims of nuisance or negligence for the damage to property caused by community cats).

claims against municipalities that conduct TNVR, the municipality may demonstrate that the TNVR program was adopted for the stated purpose of stabilizing and reducing community cat populations, protecting public health through vaccination efforts, and/or resolving nuisance behaviors and corresponding complaints. As such the municipality may argue that the TNVR program is promoting a legitimate government purpose and thus it should not be held liable to third-parties.

In sum, properly implemented TNVR programs serve multiple purposes, including stabilizing and reducing community cat populations, protecting public health through vaccination efforts, and/or resolving nuisance behaviors and corresponding complaints. These are all goals worthy of government involvement, and the governmental agency should make these interests and intents clear and remove any unintended legal obstacles that result from a misapplication of traditional animal control laws. Promoting the consistent interpretation and/or drafting of laws related to aspects of TNVR programs will serve to further these interests.

Opposition to TNVR

TNVR is not without opposition.⁵¹ Certain wildlife and bird advocacy organizations primarily (or solely) concerned with the sustainability of native species and the ecosystem and a small minority of animal welfare organizations⁵² oppose the use of TNVR. The conservation groups have attacked its use citing a lack of scientific proof that it works and insisting that lethal methods be used to protect wildlife and public health.⁵³ Some have argued that feral cats are exotic or invasive species and do not fill an existing niche in the environment and that even well-fed cats significantly impact wildlife.⁵⁴ These opponents of TNVR vilify community cats for killing native birds, some of whom are threatened or endangered, citing predation estimates and economic impacts that are derived from flawed science.⁵⁵ For example, one widely publicized paper estimates that “cats in the contiguous United States annually kill between 1.3 and 4.0 billion birds.”⁵⁶ However, the total number of land birds in the U.S. (not including Hawaii) is estimated at just 3.2 billion,⁵⁷ less than the authors’ high-end estimate. The estimates are exaggerated as a result of inaccurate assumptions used in the model from which the estimates are

⁵¹ In September 2016, a book entitled *Cat Wars: The Devastating Consequences of a Cuddly Killer* was released by Dr. Peter Marra and Chris Santella. MARRA & SANTELLA, *supra* note 10. In this book, the authors call for the removal of community cats from the outdoors “by any means necessary.” The book has caused a considerable amount of controversy and has received criticism for its failure to recognize the flaws in the reasoning and methods for control of the community cat population. See Katie Lisnik, *Cat Wars? Let’s call a ceasefire*, Animal Sheltering (Sept. 13, 2016), <https://www.animalsheltering.org/blog/cat-wars-lets-call-ceasefire>.

⁵² See PETA, *What is PETA’s stance on programs that advocate trapping, spaying, and neutering, and releasing feral cats?*, <http://www.peta.org/about-peta/faq/what-is-petas-stance-on-programs-that-advocate-trapping-spaying-and-neutering-and-releasing-feral-cats/> (last visited Feb. 19, 2017). But see NO KILL ADVOCACY CTR., *The Wild Life of Feral Cats*, 6 No Kill Advoc. 1, 2 (2008), http://www.friends4life.org/pdf/Feral_Fact_sheet.pdf.

⁵³ See, e.g., Barrows, *supra* note 10, at 1367-8.

⁵⁴ See generally Travis Longcore et al., *Critical Assessment of Claims Regarding Management of Feral Cats by Trap-Neuter-Return*, 23(4) CONSERVATION BIOLOGY 887-94 (2009), <http://drupal.wildlife.org/documents/policy/Critical.Assessment.Feral.Cats.Longcore.pdf>.

⁵⁵ Vox Felina, *TNR Fact Sheet No. 2: Predation* (Aug. 2012), http://voxfelina.com/voxfelina/Vox_Felina_Fact_Sheet_Predation_v.1.1.pdf.

⁵⁶ Scott R. Loss et al., *The impact of free-ranging domestic cats on wildlife of the United States*, 4 Nature Comm. No. 1396 at 2 (2013), <http://www.nature.com/articles/ncomms2380>.

⁵⁷ Partners in Flight Population Estimates Database (2013), <http://rmbo.org/pifpopestimates/Database.aspx>.

generated.⁵⁸ In fact, The Royal Society for the Protection of Birds in the United Kingdom has stated there is no scientific evidence that cat predation has any impact on bird populations in the U.K.⁵⁹ They explain that many millions of birds die naturally every year, mainly through starvation, disease, or other forms of predation. There is evidence that cats tend to take weak or sickly birds⁶⁰ who would have died in any event thus causing little additional predation. Further, research has shown that declines in bird populations are most commonly caused by habitat change or loss, particularly on farmland.⁶¹

Although it is true that some cats kill birds and other small mammals, TNVR is designed to *reduce* the number of community cats and thus protect birds and other wildlife. Traditional trap-and-remove techniques have failed to effectively manage the population of community cats. In fact, the only cases where lethal methods of control of community cats have successfully eradicated the population of free-roaming cats are those on small oceanic islands using cruel and hazardous methods. For example, on Marion Island, 115 square miles, it “took 19 years to exterminate approximately 2200 cats—using feline distemper, poisoning, hunting and trapping, and dogs. . . . On Ascension Island, roughly one-third the size of Marion Island, it cost approximately \$1732 per cat to eradicate an estimated 635 cats over 27 months.”⁶² However, as noted above, studies of targeted TNVR programs have shown success in reducing the numbers of free-roaming cats, humanely, and at a savings to local jurisdictions.

Opponents also claim that the presence of free-roaming cats creates a public health hazard given the potential for cats to transmit rabies and other diseases.⁶³ However, these claims too are exaggerated. “Since 1960 only two cases of human rabies have been attributed to cats.”⁶⁴ In 2014, 272 cases of rabid cats were reported to the CDC, representing 4.51% of all reported cases, with the number of rabid cats remaining largely unchanged over the past 25 years despite the

⁵⁸ For example, identifying just a few of the problems, the model (1) inflates the estimate of unowned cats in the U.S. by using the frequently cited values which are not grounded in empirical data; (2) inflates the predation rate of unowned cats by relying on decades-old studies that did not use random-sampling of free-roaming cats but instead focused on hunting cats; (3) uses unproven methods for converting stomach contents of cats to annual predation rates, and (4) assumes that 80–100% of unowned cats successfully hunt birds, again inflated because of a heavy reliance on studies of rural cats, when in fact most unowned cats live in urban areas where they are less reliant on prey. See Written testimony of Peter J. Wolf, *supra* note 11.

⁵⁹ Royal Soc’y for Protection of Birds, *Are cats causing bird declines?*, <http://www.rspb.org.uk/get-involved/community-and-advice/garden-advice/unwantedvisitors/cats/birddeclines.aspx> (last visited Feb. 19, 2017).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Vox Felina, *Fact Sheet No. 1: Trap-Neuter-Return* (Aug. 2012) http://voxfelina.com/voxfelina/Vox_Felina_Fact_Sheet_TNR_v_1.1.pdf.

⁶³ See, e.g., A.D. Roebing et al., *Rabies Prevention and Management of Cats in the Context of Trap-Neuter-Vaccinate-Release Programmes*, ZOOSES & PUB. HEALTH 1, 4 (2013), <http://abcbirds.org/wp-content/uploads/2015/05/Roebing-et-al.-2013-Rabies-prevention-and-management-of-cats-in-TNVR-programs.pdf>. Cats have also been linked to toxoplasmosis, certain intestinal parasites and flea-borne typhus, yet studies have shown they do not create any serious risk of transmission to humans. See Alley Cat Allies, *Feral Cats and the Public—A Healthy Relationship*, <http://www.alleycat.org/resources/feral-cats-and-the-public-a-healthy-relationship/> (last visited Feb. 19, 2017) [hereinafter *Feral Cats and the Public*].

⁶⁴ Vox Felina, *TNR Fact Sheet No. 3: Rabies* (Aug. 2013), http://voxfelina.com/voxfelina/Vox_Felina_Fact_Sheet_Rabies_v_1.1.pdf (citing CDC, *Recovery of a Patient from Clinical Rabies—California, 2011*, 61 MORBIDITY & MORTALITY WKLY. REP. 61-64 (2012)).

increasing popularity of TNVR.⁶⁵ In fact, TNVR programs evaluate cats and return only healthy cats after vaccinating them for rabies, thereby reducing, for years, the risk of rabies in the returned cats.⁶⁶ Finally, community cats, many unsocialized to humans, rarely have contact with humans, making disease transmission highly unlikely.⁶⁷

Opponents of TNVR have recently resorted to legal avenues to discredit TNVR. In early 2016, the American Bird Conservancy (“ABC”) filed a lawsuit against the New York Commissioner of Parks, Recreation and Historic Preservation (“Parks”) for violations of the Federal Endangered Species Act (“ESA”).⁶⁸ In a case of first impression, ABC claims that Parks is responsible for facilitating and maintaining of community cat colonies on Jones Beach State Park by allowing volunteers to perform TNVR and that these colonies are in close proximity to the nesting areas of piping plovers, which results in the “take” of the piping plovers. Piping plovers are listed as “threatened” under the ESA. Although the amended complaint filed by ABC fails to allege directly that any of the community cats at Jones Beach have harmed any piping plovers in the area, they claim that the mere presence of the cats is a threat to the nesting birds. This lawsuit is currently pending in the Eastern District of New York after the court denied Parks’ motion to dismiss.⁶⁹

Conclusion

The Tort Trial and Insurance Practice Section urges the adoption of this resolution seeking support for the legal recognition of TNVR as a population management tool for community cats which are humanely trapped, evaluated, sterilized by a licensed veterinarian, vaccinated against rabies, ear-tipped, and returned to their original location and urging state, territorial, and local municipal legislative bodies and governmental agencies to adopt and/or interpret existing laws and policies that allow the implementation and administration of such programs for community cats within their jurisdictions. TNVR programs use humane methods to decrease community cat populations and increase public health through increased vaccination at a savings to local jurisdictions.

Respectfully submitted,
Sam H. Poteet, Jr., Chair
Tort Trial and Insurance Practice Section
August 2017

⁶⁵ Benjamin P. Moore et al., *Rabies Surveillance in the United States during 2014*, 248 JAVMA 777, 784 (Apr. 1, 2016), <http://avmajournals.avma.org/doi/pdfplus/10.2460/javma.248.7.777>.

⁶⁶ Vox Felina, *Rabies*, *supra* note 64 (citing veterinarian and community cat expert Dr. Julie Levy).

⁶⁷ *Feral Cats and the Public*, *supra* note 63, at 1 (citing Jeffrey Kravetx and Daniel G. Federman, *Cat Associated Zoonoses*, 162 ARCH. INTERN. MED. 1945-52 (2002)).

⁶⁸ American Bird Conservancy v. Harvey, Case 2:16-cv-01582 (E.D.N.Y. Mar. 31, 2016).

⁶⁹ American Bird Conservancy v. Harvey, Memorandum of Decision & Order, Case 2:16-cv-01582-ADS-AKT (E.D.N.Y. Feb. 6, 2017) (the decision does not address the legality or effectiveness of TNVR).

GENERAL INFORMATION FORM

Submitting Entity: Tort Trial and Insurance Practice Section

Submitted By: Sam Poteet, Chair, Tort Trial and Insurance Practice Section

1. Summary of Recommendation.

This recommendation urges state, local, territorial and tribal legislative bodies and governmental agencies to interpret existing laws and/or adopt laws and policies that allow the implementation and administration of trap-neuter-vaccinate-return (TNVR) programs for free-roaming ("community") cats within their jurisdictions. TNVR is a population management technique for reducing the population of free-roaming community cats by which such cats are humanely trapped, evaluated, sterilized by a licensed veterinarian, vaccinated against rabies, ear-tipped, and returned to their original location from which they were found. The legality of TNVR programs have been challenged in areas of the country due to the inconsistent legal treatment of community cats and TNVR by state statutes and local ordinances and policies. Consistent legal treatment that allows TNVR programs promotes the effective, efficient, and humane management of community cats, promotes conservation efforts, and protects public health.

2. Approval by Submitting Entity.

Approved by the Tort Trial and Insurance Practice Section on April 29, 2017.

3. Has This or a Similar Recommendation Been Submitted to the House or Board Previously?

No.

4. What Existing Association Policies Are Relevant to This Recommendation and How Would They Be Affected by Its Adoption?

Not applicable.

5. What Urgency Exists Which Requires Action at This Meeting of the House?

Not applicable.

6. Status of Legislation. (If applicable.)

Not applicable.

7. Cost to the Association. (Both Direct and Indirect Costs)

None.

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8. Disclosure of Interest. (If applicable.)

Not applicable.

9. Referral.

This Report and Resolution is referred to the Chairs and Staff Directors of all ABA Sections and Divisions.

10. Contact Persons. (Prior to the Meeting)

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EXECUTIVE SUMMARY

1. Summary of the Recommendation

This recommendation urges state, local, territorial and tribal legislative bodies and governmental agencies to interpret existing laws and/or adopt laws and policies that allow the implementation and administration of trap-neuter-vaccinate-return (TNVR) programs for free-roaming ("community") cats within their jurisdictions. TNVR is a population management technique for reducing the population of free-roaming community cats by which such cats are humanely trapped, evaluated, sterilized by a licensed veterinarian, vaccinated against rabies, ear-tipped, and returned to their original location from which they were found. The legality of TNVR programs have been challenged in areas of the country due to the inconsistent legal treatment of community cats by state statutes and local ordinances and policies. Consistent legal treatment that allows TNVR promotes the effective, efficient, and humane management of community cats, promotes conservation efforts, and protects public health.

2. Summary of the Issue that the Recommendation Addresses

It is estimated that there are 30-40 million community cats living in the United States. Jurisdictions have struggled to manage the community cat population for many years using a traditional trap-and-remove technique that typically results in killing the cats. This technique has proven ineffective and costly. TNVR is a more effective, efficient, and humane method of control shown to reduce the populations of community cats, reduce the intake of community cats to shelters, reduce the chances of transmission of disease in the communities through vaccination efforts, and reduce complaints to local police and animal control departments regarding nuisance and property destruction. Traditional criminal and civil statutes create unnecessary obstacles for the implementation and administration of TNVR programs.

3. Please Explain How the Proposed Policy Position Will Address the Issue

If jurisdictions interpret existing laws and policies and/or adopt laws and policies to allow the implementation and administration of TNVR programs, local governments and private entities and individuals will be able to implement such programs without the possible threat of sanction and, in turn, provide a humane, effective, cost-saving alternative for shelters seeking to limit the intake of community cats into their facilities, protect public health, and reduce the number of free-roaming cats in the neighborhoods they serve.

4. Summary of Minority Views or Opposition Which Have Been Identified

Certain wildlife and bird conservation groups and a very small minority of animal welfare organizations have opposed the use of TNVR programs for the control of community cats. These stakeholders claim that free-roaming cats have an adverse impact on birds and other wildlife and pose a threat to public health. Moreover, free-roaming cats are subjected to threats such that their lives outdoors result in their pain and suffering. They argue that TNVR is ineffective and all free-roaming cats must be eradicated through trap and remove, e.g. kill,

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programs. However, the studies upon which they rely generally are flawed. In fact, there is considerable empirical evidence showing that TNVR is more effective, efficient, and humane than trap-and-remove programs for the management of community cats.

